IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 324 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT
Versus
RAJUBHAI VASHRAMBHAI VAGHRI & 4

==========

Appearance :
MR IM PANDYA APP for Appellant
MR MEHUL SHARAD SHAH for Respondents No.1-5
MRS NILIMA M SHAH for Respondents No.1-5

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] Leave to appeal is granted. Appeal is admitted. Learned advocate Mr.Mehul Sharad Shah waives service for the respondents.

[2] Upon the request of learned APP Mr.I.M.Pandya for the appellant - State and learned advocate Mr.Mehul Sharad Shah for the respondents, the matter was taken up for final hearing as Record and Proceedings of the trial Court is available with this Court and learned advocates appearing in the matter have assisted this Court by providing extra copies of the evidence and documents produced on record during the trial.

[3] The instant appeal is preferred by the

State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the learned Additional Sessions Judge, Mehsana on 14th September, 2004 in Sessions Case No.42/2002 whereby all the five respondents being accused of the said Sessions Case came to be acquitted by the trial Court for the charges levelled against them under Sections 147, 148, 149, 302, 323 504 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

[4] The prosecution case as has been disclosed can briefly be stated that the incident occurred on 8th August, 2002 at Khodiyar Goddess temple at Indrad, in which it is alleged that all the respondents murdered Chimanbhai Ishwarbhai Bhuva of the said temple. The complaint was given by one Hasmukhbhai Chimanbhai Dantani, and according to him, at about 12.00 p.m deceased Chimanbhai had been to temple for offering prayer and pooja, and all the five brothers of the

complainant also attended the said pooja. Thereafter, Mehul, and above three sons of the deceased along with the complainant returned from temple, while one brother Lagdhirbhai @ Amrut remained with his father. Other persons of the locality, Sartan Shivabhai Vaghari, Natvarbhai Lakhabhai Vaghari, Girishbhai Manabhai Gvaghari and Bhikhabhai Natubhai Vaghari etc., also stayed at the temple. At 4.30 p.m to 5.00 p.m at the temple, accused No.2 – Vikrambhai Vashrambhai Vaghari started giving abuses to the deceased. Accused No.2 – Vikrambhai was prevented by the deceased and, therefore, he got excited and started beating with fist to the deceased. Thereafter, accused No.1 – Rajubhai Vashrambhai Vaghari came and he caught hold of the deceased by neck and he was thrown on the floor of the temple. Accused No.4 – Tejmalbhai Vashrambhai Vaghari and accused No.3 – Pankajbhai Vashrambhai Vaghari both started beating Chimanbhai with fists and kicks and, therefore, Chimanbhai died on the spot. Thereafter, all accused ran away. P.W.3 – Lagdhirbhai son of deceased Chimanbhai

was present at the scene of offence and he attempted to call Doctor, but Doctor was not available and, therefore Lagdhirbhai went to their field and conveyed the incident to the complainant his, brother Hasmukhbhai. The mother of the complainant and other brothers came to the temple and deceased - Chimanbhai was shifted to the hospital. Hasmukhbhai Chimanbhai, thereafter, gave the complaint in this respect before the Police Inspector, Kadi Police Station on 8th August, 2002 which is placed on record at Ex.20. The crime came to be registered at Kadi Police Station being I-C.R.No.226/2002 for the above charges and investigation was handed over to P.W.11 - Pruthvibhai Rumalbhai Parmar, Police Inspector, Kadi Police Station. After investigation was over, a charge-sheet came to be filed against all the respondents in the Court of Judicial Magistrate, First Class, Kadi, which was registered as Criminal Case. Learned Judicial Magistrate, First Class, Kadi, thereafter, committed the case to the Court of Sessions, Mehsana where the said case was registered as

Sessions Case No.42/2002.

[5] Learned Additional Sessions Judge, Mehsana framed charges against all the five respondents vide Ex.7 on 1st March, 2004 and the charge was read over to each of the respondents. All the respondents pleaded not guilty and, therefore, they were put to trial.

[6] To prove its case, the prosecution examined as many as 11 witnesses and produced on record voluminous documentary evidence. After the prosecution evidence was over, the learned Additional Sessions Judge, Mehsana brought to the notice of each of the accused incriminating circumstances in evidence under Section 313 of the Code of Criminal Procedure and the statements of the accused, respondents herein were recorded. The defence of the respondents was of total denial. After hearing prosecution as well as defence, the learned trial Judge came to the above conclusion and hence, this appeal.

[7] Learned APP Mr.I.M.Pandya for the appellant – State and learned advocate Mr.Mehul Sharad Shah for the respondents were heard, in detail in respect of this appeal.

[8] We have undertaken careful scrutiny of the evidence recorded during the trial and the Record & Proceedings called for from the trial Court has been gone through carefully. We have considered vital features of the matter and reasonable probabilities arising out of the circumstances of the case. We have scanned the reasons arrived at by the trial Court for acquittal. We have also taken into consideration the contentions raised by learned advocates appearing for the State and the respondents.

[9] Appreciating the evidence recorded during the trial, it appears that the prosecution examined five witnesses as eye witnesses and those witnesses are P.W.3 – Lagdhirbhai Chimanbhai Datani, Ex.21, P.W.4 – Natvarbhai

Lakhabhai Vaghari, at Ex.24, P.W.5 – Sartanbhai Shivabhai Vaghari, at Ex.26, P.W.6 – Bhikhabhai Natvarbhai Vaghari, at Ex.27 and P.W.7 – Girishbhai Manabhai Vaghari, at Ex.28. Mostly the prosecution rests on the evidence of these witnesses and the evidence of medical officer P.W.1 – Dr.Parulben Chandrakant Sheth at Ex.17, who conducted postmortem of deadbody.

[10] It is necessary first to evaluate the evidence of P.W.1 - Dr.Parulben Chandrakant Sheth at Ex.17 wherein she stated that she conducted postmortem on deadbody on 9th August, 2002 at Kadi. According to her, there was no external or internal injuries to deadbody and cause of death was due to shock and cardiac arrest. In postmortem note, it was noted that the final cause of death could be given after receiving report from Forensic Science Laboratory in respect of viscera. In her evidence, she has stated that according to the Forensic Science Laboratory opinion, which is placed on record at

Ex.38, no poison was found in viscera and, therefore, the cause of death was shock due to cardiac arrest. Going through the evidence of P.W.1 – Dr.Parulben Chandrakant Sheth, it transpires that the prosecution failed to establish homicidal death of deceased Chimanbhai as there were no injuries, either external or internal found on the body. In this connection, when the evidence of the witnesses are assessed, P.W.2 – Hasmukhbhai Chimanbhai Dantani examined at Ex.19, stated in his deposition that he was conveyed by his brother – Lagdhir that his father Chimanbhai was done to death by Vashrambhai. The incident was referred by Lagdhir to this witness in a manner that Chimanbhai was dragged out of the temple by Vikram and accused Raju inflicted a blow with a brick on the back of his father and, thereafter, he filed a complaint. He stated that Lagdhirbhai informed him that Vikram gave abuses to his father. When he was prevented from uttering abuses, he got excited and he started beating with fist. Thereafter, Raju caught hold of his father by neck and was thrown on the floor

of the temple. Other accused Tejmalbhai and Pankajbhai both had beaten Chimanbhai with fists and kicks. He has been cross-examined by the defence in detail. P.W.3 - Lagdhirbhai Chimanbhai Datani, son of the deceased stated that while his deceased father was offering pooja, accused Vikramsinh Vashrambhai Vaghari started giving abuses to the deceased. Deceased Chimanbhai prevented Vikramsinh not to give abuses in the temple. Vikramsinh, therefore, was excited and started beating the deceased with fists. Thereafter accused Rajubhai Vashrambhai Vaghari caught hold of the deceased by neck and the deceased was thrown on the floor of the temple. Thereafter accused Dilipbhai Vashrambhai Vaghari, Tejmal and Pankajbhai had beaten the deceased with fists and kicks and, therefore, his father died on the spot. While his evidence was considered by the Trial Judge and going through the cross-examination of the witness, it is found that the original version which witness stated before the police was in respect of quarrel

between one Vashrambhai and deceased. These contradictions are proved. In the statement he gave before the police, the witness stated that Vashrambhai Ishwarbhai had been to the temple and had given a stick blow on the neck of the deceased and, therefore, the deceased had fallen down on the ground, however, witness stated altogether a different theory in his examination-in-chief and, therefore, the witness was not relied upon by the Trial Court. P.W.4 – Natvarbhai Lakhabhai Vaghari examined at Ex.24, stated that the accused came with a club and before that some altercation between the accused and deceased had taken place. Somebody pushed deceased Chimanbhai and, therefore, he had fallen on the floor and had died. This is all the evidence of this witness and he has been declared hostile by the prosecution. P.W.5 – Sartanbhai Shivabhai Vaghari examined at Ex.26 stated that when pooja was in process, accused – Vikram was accosted by deceased that why had Vikram came to temple and, therefore, exchange of words took

place between them. He came out from the temple. Accused – Raju brother of Vikram took out a stick and gave a blow on neck of the deceased and, therefore, deceased had fallen down and had died. P.W.6 – Bhikhabhai Natvarbhai Vaghari examined at Ex.27 also stated that Raju inflicted a blow with stick on the neck of the deceased and on account of that deceased became unconscious and had fallen on the ground. P.W.7 - Girishbhai Manabhai Vaghari examined at Ex.28, also stated that Vikram came where Chimanbhai was offering pooja and Chimanbhai prevented Vikram from entering temple and, therefore, Raju inflicted a blow by stick upon the body of the deceased – Chimanbhai. The other accused had caught hold of the deceased – Chimanbhai and they were beating with fists and kicks. The witness is examined-in-cross by the defence. P.W.8 – Amratbhai Motibhai Desai is a panch of panchnama at Ex.31, examined at Ex.30, but he has not supported the prosecution case. P.W.9 – Sakaji Bhuptaji Thakor, is also panch of panchnama at Ex.31, examined at Ex.32, but he has not supported the prosecution

case. P.W.10 – Merambhai Maganbhai Vaghela examined at Ex.33, was P.S.O. of Kadi Police Station on 8th August, 2002 and he registered crime against the accused upon the complaint of Hasmukhbhai recorded before the Police Inspector Mr.P.R.Parmar. While P.W.11 – Pruthvi Rumalbhai Parmar examined at Ex.35 is an Investigating Officer.

[11] Learned trial Judge, while appreciating the evidence, came to the conclusion that Hasmukhbhai is though formal complainant, but he was informed by witness – Lagdhirbhai about the incident wherein according to the complaint, it was conveyed to the complainant that one Vashrambhai had given a stick blow to the deceased. However, Lagdhirbhai did not say anything about Vashrambhai was present at the scene of offence and denied in examination-in-cross, that he conveyed to Hasmukhbhai that a blow of stick was inflicted by Vashrambhai. While learned trial Judge evaluated the evidence of the

Investigating Officer, it was found that Lagdhirbhai did state before the police and this contradiction was proved that their father was beaten by Vashrambhai and a blow was inflicted on the back side of throat of Chimanbhai. Now it has been established during the deposition of the Investigating Officer that Vashrambhai was not present at the scene of offence at the relevant juncture and was at the place of his service and, therefore, he was not taken as an accused in this case. This contradiction goes to the root of the prosecution case. Evaluating the evidence of P.W.4, P.W.5, P.W.6 as well as P.W.7, the learned trial Judge observed that there were contradictions in the version given by Lagdhirbhai and Hasmukhbhai and these witnesses about the blow inflicted by Vashrambhai or Rajubhai Vashrambhai. P.W.4 – Natvarbhai Lakhabhai Vaghari described the incident altogether in different manner and according to him, accused – Vikram slapped deceased Chimanbhai and, thereafter, the second quarrel took place. According to the learned trial Judge, this is not

the original prosecution case. Even, the evidence of P.W.5 – Sartanbhai Shivabhai Vaghari, P.W.6 – Bhikhabhai Natvarbhai Vaghari and P.W.7 – Girishbhai Manabhai Vaghari were evaluated and appreciated by the trial Court in judgment in para-24 and found that each witness was contradicting the other. Even the place of offence and the manner in which the incident occurred differ from witness to witness. This being the evidence of eye witnesses, learned trial Judge also considered the medical evidence in juxtaposition of ocular evidence. Even four witnesses stated that Chimanbhai received stick blows, fists and kicks blows and was thrown on the floor of the temple, P.W.1 – Dr.Parulben could not find any external injury mark on the body of the deceased Chimanbhai nor P.W.1 could detect any internal injury connected with the cause of death of Chimanbhai. In view of this medical evidence, the prosecution case, as has been disclosed through four eye witnesses becomes unreliable altogether and it clearly appears that the story that deceased was beaten by the accused

appears to be an afterthought because from the deposition of P.W.1 – Dr.Parulben and postmortem note produced on record, it transpires that the death was not homicidal, but natural one. Considering the broad probabilities of the case and while dealing with the prosecution case that Chimanbhai might be a patient of heart disease and on account of seeing the accused rushing towards him for beating he might have received shock and on account of which, the deceased might have suffered cardiac arrest. Had it been that prosecution case then the cause of the death of the deceased was no less offence than culpable homicide. However, the learned trial Judge, while appreciating the circumstance, observed that there was no evidence of the prosecution in this respect that deceased was suffering from heart disease and that on account of apprehension that the accused were beating him, he received shock, resulted in cardiac arrest.

[12] This is an appeal against the order of

acquittal, the scope of the appeal is well defined and established. There may be legitimate second view which may be taken from the same evidence recorded during the trial by the Appellate Court but unless and until, it is found that the conclusion arrived at by the trial Court are manifestly erroneous, palpably wrong, perverse or demonstrably unsustainable, no interference is permitted in the order of acquittal only because second view was possible from the evidence recorded during the trial than taken by the trial Court. When we appreciated the evidence recorded during the trial and evaluated the reasons assigned by the trial Court for acquittal, we find that the conclusion arrived at by the trial Court from the evidence recorded are plausible, possible and probable. In these circumstances, for the reasons stated above, by no stretch of reasoning, it could be said that the conclusion arrived at by the trial Court for acquittal are perverse, or manifestly erroneous. The view taken by the trial Court appears to be

proper view which could be taken from the evidence recorded during trial. In this view of the matter, we do not find the judgment and order impugned in this appeal exceptional as to warrant any interference and hence, the following order.

Appeal stands dismissed.

[J. R. VORA,J.]

[M. R. SHAH,J.]

(vijay)